RACHAEL E. HERRERA, Appellant	:	Order Affirming Decision
v.	:	Docket No. IBIA 92-144-A
ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	November 16, 1992

Appellant Rachael E. Herrera seeks review of a March 13, 1992, decision of the Acting Portland Area Director, Bureau of Indian Affairs (BIA; Area Director), disapproving an application for a loan from the Revolving Loan Fund. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

On February 3, 1992, appellant filed an application for a loan in the amount of $150,000 from the Revolving Loan Fund. Appellant sought the loan for the purpose of purchasing and renovating a house in the Klamath Falls, Oregon, area to be used as an adult foster care facility, and for furnishings and working capital for the enterprise.

By decision dated March 13, 1992, the Area Director disapproved the loan request, stating:

> In regards to this proposed enterprise you have requested the [BIA] to waive the 20 percent equity requirement.
>
> In your application you indicate limited experience in the operation of an adult foster care home, having managed a home one year and leased a home for one year.
>
> In review of your forecasted projections, the first year's projections were considered optimistic and there is no contingency available should any unexpected need for possible emergency expenditures occur.
>
> Due to your not being able to contribute any equity toward this enterprise this loan would be funded at 100 percent. The [BIA] does assume a higher risk than other lenders, but we are reluctant to fund a start-up business at the 100 percent level as you have requested.

> Due to the 100 percent financing and the risk involved in a start-up enterprise our analysis indicates that there is not a reasonable prospect for repayment of this loan.

The Board received appellant's notice of appeal from this decision on April 13, 1992. Both appellant and the Area Director filed briefs on appeal. 1/

The Board has consistently held that BIA's decision of whether or not to approve a loan under Title I of the Indian Financing Act, 25 U.S.C. §§ 1461-1469 (1988), is discretionary, and that the Board will not substitute its judgment for that of BIA. The Board will, however, review the decision to ensure that all legal prerequisites to the exercise of discretion were met. See, e.g., McCloud v. Acting Aberdeen Area Director, 21 IBIA 254, 256 (1992). In addition, as with all cases arising under 25 CFR Part 2, the appellant bears the burden of proving that the Area Director's decision was erroneous or not supported by substantial evidence. See, e.g., Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153, 157 (1992).

Appellant first contends that she should not be considered as having limited experience because "[m]anaging an Adult Foster Care * * * facility is virtually the same as operating your own [facility]" (Prindiville's letter at 1). She further contends that she has technical skills acquired through courses in sociology and accounting.

The administrative record shows that the Area Director took appellant's experience into consideration in making his decision. In his appeal brief, the Area Director argues that managing an adult foster care facility is not like operating your own facility because "[a] manager deals with day to day operations of business but does not need to make major decisions which can improve or adversely affect the future of the business" (Area Director's brief at 3).

The Board agrees with the Area Director that managing a facility for another person and owning and operating one on your own are not virtually the same. Although the record indicates that appellant is good with people, and suggests that she has academic knowledge and some practical experience necessary for operating her own facility, the Board cannot find that the Area Director erred in concluding that appellant had shown only limited experience.

1/ Appellant's brief consists of a letter to the Board from appellant and a letter to the Board from Signe D. Prindiville, General Business Systems, Klamath Falls, Oregon. Most of appellant's actual arguments against the Area Director's decision are set forth in Prindiville's letter. In accordance with its decision in Estate of Benjamin Kent, Sr. (Ben Nawanoway), 13 IBIA 21, 23-24 (1984), the Board accepts Prindiville's letter even though she would not ordinarily be qualified under 43 CFR 1.3 to appear before the Board. This acceptance is based upon appellant's adoption of the letter as her own through her inclusion of it with her own letter.

Appellant next contends that the Area Director erred in concluding that her income projections were optimistic and that there was no contingency for emergencies. She contends that even assuming there were only five clients in the seven-client facility, she would still have an income of $459.50 per month, after making the loan payment. She also explains that, because of the nature of the business, all of her personal living expenses are included in the business expenses. Thus, she states that even if income were low, she would not need additional money to pay her living expenses. Appellant points out that she successfully made a $1,800 per month lease payment during all of 1991 on income from a smaller facility. Concerning possible emergencies, appellant states that the first loan payment was not to be due for 120 days in order to allow time to complete alterations to the house to be purchased and to fill the facility, the loan included $5,873 for working capital, and once the facility was operating, short-term financing would be available for any emergencies that might arise.

The Area Director responds that the income projections included with appellant's initial application assumed an immediate full occupancy of the facility, even during the first months of operation. He contends that even using the more conservative figures appellant presents on appeal, the projections are still unreasonable. He states that the State agency which licenses adult foster care facilities informed his office that the alterations to the house would need to be completed before the facility could be licensed, which would require additional time before occupancy; it is unrealistic to assume occupancy of a 2,300 square-foot house with only four bedrooms by nine people (seven clients, appellant, and one staff person); there is no provision for possible emergency situations, such as appellant's illness or breakdown of the 1976 car which is to provide the only source of transportation; a delay of payment for the first six months of the loan would actually result in increased repayment problems; the amount requested for working capital was considered inadequate to meet either the basic needs of the enterprise or to provide for possible emergency situations; and it is unlikely that short-term financing would be available in any such emergency considering appellant's debt structure.

The record includes information concerning the alterations needed to be made to the house appellant sought to purchase for the facility. That information indicates that the living room was to be converted into a bedroom and one bedroom was to be divided. Thus, it appears that the house would have six bedrooms rather than four. The basement of the house was not included in the Area Director's statement that there was only 2,300 square feet in the house. The basement has an area of 1,905 square feet. The information in the record shows only that the basement is finished and apparently dry; it does not indicate whether the basement is actually liveable, especially for individuals who might be more than usually susceptible to illnesses.

Despite these matters, the Board cannot conclude that the Area Director erred in determining that appellant's income projections were overly optimistic. Even under appellant's more conservative assumption presented on appeal, she would need a minimum of five clients in the facility from the

day she purchased the house in order merely to break even. In addition, there are no reliable financial reserves should there be even a relatively minor emergency. Based upon the facts of this case, the Area Director's conclusions concerning the likelihood of short-term financing being available to appellant are not unreasonable.

Finally, appellant contends that this is not a start-up business, but that she is merely moving her existing business to a new facility. She argues that she has been in business and thus has an established reputation, thereby significantly decreasing the risk that is normal in a start-up business.

The Area Director points out that appellant was only the manager/lessee of the old business, and that she now proposes to own and operate a new business with new clients in a new facility. He states that he was informed that appellant agreed not to entice residents of her former employers to move to her new business.

The fact that appellant has been in the business of adult foster care does not mean that her project is not a start-up business. Appellant has not shown error in the Area Director's determination.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 13, 1992, decision of the Acting Portland Area Director is affirmed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge